

How Measures Are Brought to the Senate Floor: A Brief Introduction

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Summary

Two basic methods are used by the Senate to bring legislation to the floor for consideration: (1) The Senate, at the majority leader's request, grants unanimous consent to take up a matter, or (2) it agrees to his motion to proceed to consider it. Because the motion to proceed is subject to debate in most circumstances, it is less frequently used. Both methods are derived from the basic premise that the Senate as a body may decide what matters it considers. The Senate may also use the same two methods to bring up executive business (nominations and treaties).

This report will be updated to reflect changes in Senate practice.

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Introduction

Most measures considered by the Senate are taken from its Calendar of Business, which lists measures available for floor consideration under the heading “General Orders.” Usually, measures are placed on the calendar under General Orders when they are reported by the committee to which they have been referred. A bill or joint resolution may also be placed directly on the Calendar of General Orders upon introduction (or receipt from the House) under provisions contained in Senate Rule XIV. Normally, introduced measures are immediately read twice and referred to a committee. If objection is heard to a second reading on the same day, the measure is held over until the next day.¹ After a second reading, if objection is heard to further proceedings, the measure is not referred but is placed directly on the Calendar of General Orders. Conference reports do not come up for consideration from the calendar. Instead they may be called up at any time when the conference papers are filed at the “desk” in the Senate.

Over the Senate’s history, the majority leader has acquired responsibility for arranging the schedule of the Senate’s business. Although the presiding officer of the Senate is required to recognize any Senator seeking recognition, the long-standing practice of the Senate is to allow the majority leader (or minority leader) to have priority for recognition if seeking recognition at the same time as another Senator. Likewise, the majority leader (or a designee, such as the bill manager) is, by custom, the one who offers motions or makes unanimous consent requests concerning the floor agenda and scheduling, including the consideration of legislation or the time for the Senate to meet, recess, or adjourn.²

In general, the standing rules of the Senate place a strong emphasis on the prerogatives of individual Senators, even at the expense of the majority.³ As a result, the Senate and its agenda are greatly influenced by the preferences of individual Senators. Senators may exercise their prerogatives at any time, but comity and compromise often lead Senators to relinquish the opportunity to exercise their prerogatives fully. In exchange they enable the Senate to conduct its business more efficiently and may receive corresponding concessions in relation to measures they favor.

Unanimous Consent

A large majority of measures reach the floor of the Senate when the Senate accepts a unanimous consent request to proceed to consider them made by the majority leader (or his designee). Normally, before the majority leader requests unanimous consent, he will consult with interested Senators to ensure that no objection will be made. Although the measures taken up are generally those that have been placed on the calendar, the Senate may, by unanimous consent, agree to take

¹ The “day” in question is a legislative day. A legislative day begins when the Senate convenes after an adjournment. Sometimes, the Senate recesses, rather than adjourning, at the end of a day’s session so that a legislative day may continue for many calendar days.

² For more information, see CRS Report RS21255, *Motions to Proceed to Consider Measures in the Senate: Who Offers Them?*, by Richard S. Beth and Mark J. Oleszek.

³ For more information, see CRS Report RL30850, *Minority Rights and Senate Procedures*, by Judy Schneider.

up any measure, whether it is already on the calendar, has been previously reported, or has even been introduced.

Unanimous consent agreements may provide for the Senate to immediately proceed to consider a measure or may be made in advance of actual consideration. The agreement may provide that the measure in question come up at a specific time in the future or that the majority leader (usually in consultation with the minority leader) bring it up unilaterally at any time thereafter. Unanimous consent agreements to bring a measure to the floor, perhaps by discharging a Senate committee from its further consideration, as well as to pass it without debate, are common. Such agreements often permit Senators to have their statements placed in the *Congressional Record* as if they were delivered. The process of consultation and negotiation used to craft such unanimous consent agreements is sometimes referred to as the “clearance” process.

The request for unanimous consent to take up a measure is often made in a freestanding form, but sometimes it is part of a more extensive unanimous consent request that also sets terms for the measure’s consideration. The majority leader often seeks to negotiate such terms in advance, placing limits on the ability of Senators to debate a measure or offer amendments, because the rules of the Senate place no general limits on such prerogatives. These negotiations are designed to produce unanimous consent agreements (sometimes called “time agreements,” since one of their primary objectives is to limit the time available for debate) that govern consideration of a measure in place of the regular standing rules of the Senate.⁴

Motions to Proceed

Alternately, the majority leader may instead offer a motion that the Senate proceed to consideration of a measure, particularly if he has been unable to negotiate a unanimous consent agreement to do so.⁵ Although this motion requires only a simple majority for approval, in most parliamentary situations it is debatable. As a result, the motion to proceed is itself susceptible to extended debate. As a result, even before a measure can itself reach the Senate floor, there may be a filibuster on the question of whether the Senate should consider it at all.⁶

The majority leader may attempt to invoke cloture on the motion to proceed but may still be faced with a filibuster against the underlying measure. Since 1959, the rules of the Senate have allowed cloture to be invoked on the motion to proceed regardless of the type of underlying measure.⁷

On January 24, 2013, the Senate amended Senate Rule XXII to establish an additional, optional process of invoking cloture on a motion to proceed that differs in some respects from the normal

⁴ In the past, the majority leader would sometimes negotiate a time agreement in conjunction with a unanimous consent request to consider a measure, but this is no longer as common. For more on Senate procedure generally, see CRS Report 96-548, *The Legislative Process on the Senate Floor: An Introduction*, by Valerie Heitshusen.

⁵ Under Rule XVII all reports of committees, including written reports accompanying bill and the bills themselves, must lie over one day before a motion to proceed to their consideration is in order. This does not apply to privileged measures and can be superseded by unanimous consent or, rarely, by two-thirds vote of the Senate.

⁶ For more information, see CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and Valerie Heitshusen.

⁷ From the time the cloture rule was first adopted in 1917 until 1949, the motion to proceed was not subject to cloture. From 1949 until 1959 cloture could be invoked on a motion to proceed except when the underlying measure would amend Senate rules.

cloture process.⁸ Under this process, if a cloture motion filed on a motion to proceed to consider a measure or matter is signed by both floor leaders, seven additional Senators not affiliated with the majority party, and seven additional Senators not affiliated with the minority party, it will be eligible for a vote on the next session day (as opposed to the second day of session, as would otherwise be the case). If cloture is invoked, the vote will immediately be put on the motion to proceed without the usual 30 hours of post-cloture consideration.⁹

Under certain circumstances the motion to proceed is not debatable. In particular, the motion is non-debatable when offered:

- on a conference report¹⁰ or amendments between the houses,¹¹
- on a measure considered pursuant to a rule-making statute,¹² or
- during the morning hour.¹³

Although a non-debatable motion to proceed could be made during the morning hour on a wide variety of measures, it is not a frequent occurrence in modern chamber practice. When the Senate adjourns it will routinely stipulate by unanimous consent that at the start of the next legislative day the morning hour be deemed to have expired and, thus, no motion to proceed be in order. Additionally, a motion made during legislative session to proceed to consider executive calendar business (described below) is also not debatable.

Holds¹⁴

The practice of Senate majority leaders seeking advance clearance for unanimous consent to call up measures often serves to give them notice of potential objections to consideration from other Senators. A complex network of formal and informal avenues of information flows between the majority leader's office and those of all other Senators. This network is used to notify Senators of scheduling proposals from the majority leader's office and in return to provide the majority

⁸ See S.Res. 16, 113th Congress.

⁹ For more information, see CRS Report R42996, *Changes to Senate Procedures at the Start of the 113th Congress Affecting the Operation of Cloture (S.Res. 15 and S.Res. 16)*, by Elizabeth Rybicki.

¹⁰ U.S. Congress, Senate, *Riddick's Senate Procedure*, 101st Cong., 2nd sess., S.Doc 101-28 (Washington: GPO, 1992), pp. 471, 731 (hereafter *Riddick's Senate Procedure*).

¹¹ *Ibid.*, pp. 1034-1035.

¹² Congress occasionally enacts legislation that provides special procedures for considering specific measures. One example is the Congressional Budget Act of 1974, which provides procedures for considering concurrent resolutions on the budget and budget reconciliations measures. These enactments are considered an exercise of the authority granted in Article I, Section 5, of the Constitution to each house to "determine the rules of its proceedings." Some of these statutes specify that a motion to proceed to consider the measures they govern is non-debatable.

¹³ Although rarely used in modern practice, Senate rules VII and VIII provide for a period of two hours known as "morning hour" to automatically occur at the beginning of each new legislative day. During the second hour, or if the routine business known as "morning business" is concluded before the end of the first hour, a non-debatable motion to proceed would be in order (although it may not be used to call up the measure that would change Senate rules). If consideration of the measure called up by such a motion to proceed is not concluded before the end of morning hour, it is returned to the calendar and the previous unfinished business is laid before the Senate automatically. If there is no unfinished business, the Senate may continue to consider the measure taken up during the morning hour.

¹⁴ For more information, see CRS Report R43563, *"Holds" in the Senate*, by Mark J. Oleszek.

leader's office with specific requests or objections of other Senators. Similar information flows through the minority leader's office.

Notifications of prospective objections to requests to take up a measure are referred to as "holds." Senate rules provide a Senator placing a hold with at least two possible ways of enforcing it. First, if a unanimous consent request to consider a measure is made despite the hold, the Senator may object to the request. Because one objection suffices to defeat a unanimous consent request, the majority leader will frequently refrain from propounding the request on the floor when one or more Senators have made it known that they would object.

Second, if a request for unanimous consent meets objection, the majority leader may instead attempt to bring the measure up by offering a motion to proceed. Inasmuch as the motion to proceed is usually debatable, a Senator who wishes not to see the measure reach the floor may attempt to block its consideration by engaging in or threatening to engage in extended debate of this motion, a form of filibuster. Holds are given serious consideration by the majority leader when negotiating the Senate's floor agenda.

A hold is the prerogative of any Senator and may be placed for any reason. In some cases, a hold may simply reflect a request by a Senator that he or she be given advance notice before a measure will be brought to the floor. In others, a hold may be part of a complex negotiation over unanimous consent agreements covering consideration of one or more measures or even part of a deliberate plan to block consideration.

In recent years, there have been efforts to regulate the use of holds in the Senate. Section 512 of P.L. 110-81, the Honest Leadership and Open Government Act, directs the majority and minority leaders of the Senate to recognize an anonymous hold only when public notice procedures outlined in that section are followed by Senators.¹⁵ At the beginning of the 112th Congress (2011-2012), the Senate adopted a standing order that was designed to supplement this law.¹⁶

Executive Business

Senate rules provide that executive business (i.e., treaties and nominations) be considered in executive session rather than in legislative session like other business of the Senate.

Under Rule XXV, all treaties are referred to the Foreign Relations Committee and, when they are reported, are placed on the Executive Calendar. Treaties must lie over for one calendar day before any subsequent Senate consideration. Similarly, under Rule XXXI, nominations must be referred to the appropriate committee and cannot be voted on the same day they are received from the President or on the same day they are reported, except by unanimous consent.

The majority leader will typically seek to obtain unanimous consent to go into executive session to consider specific executive business. However, a majority leader may alternatively make a motion to go into executive session that may specify a particular treaty or nomination to be considered. The motion to go into executive session is neither debatable nor amendable and is

¹⁵ For more on the provisions of Section 512, see CRS Report RL34255, *Senate Policy on "Holds": Action in the 110th Congress*, by Walter J. Oleszek.

¹⁶ See S.Res. 28, 112th Congress.

highly privileged. It takes precedence over all motions except to adjourn or recess and is not subject to a motion to table. If the motion provides that the Senate go into executive session to consider a specific piece of executive business, the effect is to raise executive business for consideration by non-debatable motion.¹⁷

Although infrequent in current practice, the Senate may also agree to a request or motion to go into executive session without an item of executive business being specified. In that case, once the Senate is in executive session, it may proceed to specific executive business by unanimous consent or by motion, but the motion would be debatable.

On November 21, 2013, the Senate voted to establish a new precedent related to the number of votes necessary to bring debate to a close on presidential nominations. Under this precedent, invoking cloture on presidential nominations to positions other than the Supreme Court of the United States requires a vote of a majority of Senators present and voting (51 votes if all 100 Senators vote).¹⁸ Prior to the establishment of this precedent, the cloture threshold for nominations was three-fifths of the Senators duly chosen and sworn, or 60 votes if there are no vacancies in the Senate's membership.¹⁹

Multiple nominations are frequently considered together (“en bloc”) but only by unanimous consent. Upon objection by any Senator a nomination must be considered separately.

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¹⁷ Historically, the practice of the Senate was to consider all treaties or nominations in the order in which they appeared on the calendar of executive business, but more recent precedents have established that the Senate may consider these matters in any order it chooses. See *Riddick's Senate Procedure*, pp. 941-942, and U.S. Congress, Senate Committee on Foreign Relations, *Treaties and Other International Agreements: The Role of the United States Senate*, 106th Cong., 2nd sess., S. Prt. 106-71 (Washington: GPO, 2001), p. 137.

¹⁸ *Congressional Record*, daily edition, vol. 159 (November 21, 2013), p. S8418.

¹⁹ For more information, see CRS Report R43331, *Majority Cloture for Nominations: Implications and the “Nuclear” Proceedings*, by Valerie Heitshusen.